

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF WASECA

THIRD JUDICIAL DISTRICT

Case Type: Declaratory Judgment.

Wiste's LLC d/b/a Wiste's Meat Market,

Court File No.: _____

Plaintiff,

Judge: _____

vs.

SUMMONS

American Select Insurance Company,

Defendant.

THIS SUMMONS IS DIRECTED TO: American Select Insurance Company, P.O. Box 50001, Westfield Center, Ohio 44251-50001, and its Attorney, Joseph F. Lulic, Brownson Norby PLLC, 4800 Capella Tower, 225 South 6th Street, Minneapolis, Minnesota 55402

1. **YOU ARE BEING SUED.** The Plaintiff has started a lawsuit against you. The Plaintiff's Complaint against you is attached to this Summons. Do not throw these papers away. They are official papers that affect your rights. You must respond to this lawsuit even though it may not yet be filed with the Court and there may be no Court file number on this Summons.

2. **YOU MUST REPLY WITHIN 20 DAYS TO PROTECT YOUR RIGHTS.** You must give or mail to the person who signed this Summons a **written response** called an Answer within 20 days of the date on which you received this Summons. You must send a copy of your Answer to the person who signed this Summons located at Smith Jadin Johnson, PLLC, 7900 Xerxes Avenue South, Suite 2020, Bloomington, MN 55431.

3. **YOU MUST RESPOND TO EACH CLAIM.** The Answer is your written response to the Plaintiff's Complaint. In your Answer you must state whether you agree or disagree with each paragraph of the Complaint. If you believe the Plaintiff should not be given everything asked for in the Complaint, you must say so in your Answer.

4. **YOU WILL LOSE YOUR CASE IF YOU DO NOT SEND A WRITTEN RESPONSE TO THE COMPLAINT TO THE PERSON WHO SIGNED THIS SUMMONS.** If you do not Answer within 20 days, you will lose this case. You will not get to tell your side of the story, and the Court may decide against you and award the Plaintiff everything asked for in the Complaint. If you do not want to contest the claims stated in the Complaint, you do not need to respond. A Default Judgment can then be entered against you for the relief requested in the Complaint.



5. **LEGAL ASSISTANCE.** You may wish to get legal help from a lawyer. If you do not have a lawyer, the Court Administrator may have information about places where you can get legal assistance. **Even if you cannot get legal help, you must still provide a written Answer to protect your rights or you may lose the case.**

6. **ALTERNATIVE DISPUTE RESOLUTION.** The parties may agree to or be ordered to participate in an alternative dispute resolution process under Rule 114 of the Minnesota General Rules of Practice. You must still send your written response to the Complaint even if you expect to use alternative means of resolving this dispute.

SMITH JADIN JOHNSON, PLLC

Dated: February 11, 2019.

By: /s/ Bradley K. Hammond
Alexander M. Jadin (#387219)
Bradley K. Hammond (#0391611)
7900 Xerxes Avenue, Suite 2020
Bloomington, MN 55431
Telephone: (952) 388-0289
Facsimile: (612) 235-7927
Attorneys for Plaintiff

STATE OF MINNESOTA

DISTRICT COURT

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Wiste's LLC d/b/a Wiste's Meat Market,

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vs.

COMPLAINT

American Select Insurance Company,

Defendant.

Plaintiff, Wiste's LLC d/b/a Wiste's Meat Market as and for its Complaint against American Select Insurance Company, states and alleges as follows:

PARTIES

1. At all times relevant hereto, Plaintiff Wiste's LLC d/b/a Wiste's Meat Market (hereinafter "Plaintiff") was a limited liability company organized and existing under the laws of the State of Minnesota with its registered office address located at 10524 375th Ave., Waseca, MN 56093.

2. Upon information and belief, Defendant American Select Insurance Company (hereinafter "Defendant") is a foreign insurance company licensed and authorized to sell insurance and transact business in the State of Minnesota with its principal place of business located at P.O. Box 50001, Westfield Center, Ohio 44251-50001.

3. This matter concerns the Plaintiff's retail establishment located at 208 North Main Street, Janesville, Waseca County, Minnesota (the "Property").

4. The Property and Plaintiff's principal place of business are located in Waseca County, Minnesota; therefore, the above-named Court has jurisdiction over this matter.

FACTS

5. At all times relevant to this Complaint, Plaintiff was insured under an insurance policy issued by Defendant, Policy No.: Policy No.: XXXXXXXXX2477 (the "Policy") that insured against, among other things, damage to the Property from fire.

6. On or about December 27, 2017, the Property suffered extensive damage caused by fire (the "Loss").

7. On or about December 27, 2017, Defendant was in possession of written notice of the claim.

8. The parties were unable to reach an agreement with respect to the amount of loss and on July 3, 2018 Plaintiff demanded an appraisal.

9. Thereafter, the parties agreed to resolve the dispute pursuant to the Policy's appraisal clause and Minn. Stat. § 65A.01, subd. 3.

10. On September 4, 2018, the parties participated in an appraisal of the Loss pursuant to the terms and conditions set forth in the Policy.

11. At the appraisal, both parties presented evidence and testimony in support of their respective positions.

12. On September 4, 2018, the appraisal panel published an appraisal award for the Loss awarding Plaintiff actual cash value (ACV) in the amount of \$940,787.13 and replacement cost value (RCV) in the amount of \$1,161,765.63.

13. On September 25, 2018, Plaintiff demanded preaward interest on the appraisal award pursuant to Minn. Stat. § 549.09.

14. To date, Defendant has refused to pay the full amount of preaward interest.

15. The calculation for pre-award interest is as follows:

TOTAL: \$79,891.28 = [(251 days/365 days)) * 10% interest per year * \$1,161,765.63).

COUNT I – Declaratory Judgment

21. Plaintiff restates and realleges each of the foregoing paragraphs as though fully set forth herein and further states and alleges as follows.

22. This matter is brought pursuant to the Uniform Declaratory Judgment Act, Minn. Stat. § 555.01, *et seq.*

23. Plaintiff seeks a judicial determination of its rights under Minn. Stat. § 549.09 and its application to the appraisal award.

20. There is a real and justiciable controversy between Plaintiff and Defendant regarding the amount of preaward interest owed to Plaintiff.

21. Plaintiff is entitled to pre-award interest on the appraisal award pursuant to Minn. Stat. § 549.09 in the amount of \$79,891.28.

WHEREFORE, Plaintiff prays for judgment of the Court against Defendant for the following relief:

1. That Plaintiff is entitled to declaratory judgment entitling it to pre-award interest on the appraisal award in the amount \$79,891.28;
2. An award of costs and disbursements; and
3. For such other and further relief as this Court deems just and equitable.

SMITH JADIN JOHNSON, PLLC

Dated: February 11, 2019

/s/ Bradley K. Hammond
Alexander M. Jadin (#387219)
Bradley K. Hammond (#0391611)
7900 Xerxes Avenue, Suite 2020
Bloomington, MN 55431
Telephone: (952) 388-0289
Facsimile: (612) 235-7927
Attorneys for Plaintiff

ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements, and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. § 549.211, to the party against whom the allegations in this pleading are asserted.

SMITH JADIN JOHNSON, PLLC

Dated: February 11, 2019.

/s/ Bradley K. Hammond
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Attorneys for Plaintiff